



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 13, 1995

Mr. Robert P. Rose
Assistant City Attorney
Department of Law
City of Austin
P.O. Box 1088
Austin, Texas 78767-1088

OR95-605

Dear Mr. Rose:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 33409.

The City of Austin (the "city") received an open records request for information that the city contends is documentary evidence in a police department file of a pending police criminal investigation. You state that the police department is conducting a criminal investigation that focuses on rebates that were reassigned to A Plus Energy Management and paid by the city. The city contends that, pursuant to section 552.108 of the Government Code, in an open criminal case, all information except that generally found on the first page of the offense report is excepted from required disclosure. You have submitted for our review copies of the rebate reassignment forms signed by many individuals. Additionally, you have submitted for our review a representative sample of the checks involved. You state that it would be repetitive to submit copies of all of the checks that were involved.

Section 552.108, commonly referred to as the law enforcement exception, protects from required disclosure:

- (a) [a] record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . ;
- [and]

(b) [a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution

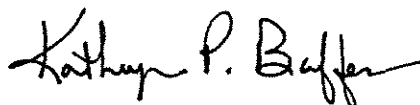
Gov't Code § 552.108. When an incident involving allegedly criminal conduct is under active investigation, section 552.108 may be invoked by any proper custodian of information which relates to the incident. Open Records Decision Nos. 474 (1987), 372 (1983). When applying section 552.108, this office distinguishes between information relating to cases that are still under active investigation and other information. Open Records Decision No. 611 (1992) at 2. In cases that are still under active investigation, section 552.108 excepts from disclosure all information except that generally found on the first page of the offense report. *See generally Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Whether information falls within the section 552.108 exception must be determined on a case-by-case basis. *Id.* at 2.

Because this police department criminal investigation is ongoing, we conclude that the information submitted for our review, except for the type of information that would generally be found on the front page of an offense report, may be withheld from required disclosure pursuant to section 552.108.

In reaching our conclusion, we assume that the representative sample of the checks related to the investigation is representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kathryn P. Baffes
Assistant Attorney General
Open Government Section

KPB/KHG/rho

Ref: ID# 33409

Enclosures: Submitted documents

cc: Mr. Carlos Villamar
A Plus Energy Management
6555 Burnet Road
Austin, Texas 78757
(w/o enclosures)

Mr. Greg Yamin
President
A Plus Energy Management
6555 Burnet Road
Austin, Texas 78757
(w/o enclosures)